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Susan Sarling  
Civ. Pers.

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

**FILE: B-186363**

**DATE: JAN 27 1977**

**MATTER OF: Waiver of overpayments—IRS Scholarship Program—  
Physical examinations to ineligible employees**

**SIGEST:**  
Collection of erroneous payments, except those for travel, made to two IRS scholarship recipients in excess of amount permitted under IRS Scholarship Program regulation may be considered for waiver since overpayments occurred through administrative error without fault on part of the students. Employees should not be charged for payments made by IRS for physical examinations to IRS employees who were under 40 years of age and not entitled under IRS policy to receive the examinations free of charge since erroneous payments were management expenses and not payments of "pay" or "allowances" within meaning of 5 U.S.C. § 5525(a).

This decision is in response to a request dated March 26, 1976, from Florence M. Oakley, an authorized certifying officer of the Department of the Treasury, Internal Revenue Service, Mid-Atlantic Region, regarding the waiver of collection of erroneous payments made to or on behalf of certain employees under two distinct programs administered by the Internal Revenue Service (IRS): the IRS Scholarship Program and the Employee Health Maintenance Program.

The record shows that the Philadelphia District Office of IRS sponsored two students, Gregory D. Powell and Gloria E. Washington, pursuant to the IRS Scholarship Program, Federal Personnel Manual (FPM), chapter 308. Although FPM chapter 308 places no dollar limitation on the amount which may be expended by the agency annually per student, IRS regulations require that the cost for each student including salary is not to exceed \$5,000 per year. (IRM 0308.243(2) and 0308.27.) Each district participating in the Scholarship Program is required to set up memorandum accounts and determine that the \$5,000 limitation is not exceeded. (RC-21A-Memorandum No. 0213-1.) The record indicates that the Philadelphia District did not maintain the required memorandum accounts for fiscal year 1975 which resulted in the overpayment to or on behalf of its two scholars in the amounts of \$162.22 and \$919.84, respectively.

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The second set of erroneous payments resulted from physical examinations given to IRS employees in the Philadelphia District by International Compu-medics Corporation (Compu-medics). The medical examinations were made available to the IRS employees in accordance with the Federal Personnel Manual (FPM), chapter 792, subchapter 3, § 4-4 (1969 ed. December 7, 1973), which implements 5 U.S.C. § 7902 (1970). Under these authorities, the head of each Government agency is to determine the extent of occupational health services to be provided at each work location. Although not required by FPM chapter 792 or IRS regulations, IRS Mid-Atlantic Region issued regulations providing that free physical examinations would be given only to employees over 40 years of age. Nevertheless, a number of employees in outlying posts of duty were apparently advised by their supervisors that the examinations were free and available to all employees. The record indicates that employees received a circular prepared by Compu-medics but distributed through IRS channels, indicating that the cost to each participant would be "Government Paid." Also, a cover letter from the District Occupational Health Officer corrected an inference from the circular that dependents could take the physical at government expense but failed to correct the impression that employees under 40 years of age would not be charged for an examination. The record states that, as a result of such misleading information, a number of employees under 40 years of age took the examination and the agency subsequently paid \$48.50 for each of these examinations.

The certifying officer seeks our determination whether the IRS Mid-Atlantic Region may waive collection of the claims in either or both of the above situations.

Overpayments of pay or allowances, other than travel or relocation allowances, arising out of administrative errors may be waived by the Comptroller General of the United States or the head of an agency if collection "would be against equity and good conscience and not in the best interests of the United States." 5 U.S.C. § 5504(a) (Supp. IV, 1974). The regulations implementing this provision are set forth at 4 C.F.R. §§ 91-95 (1976). The pertinent part of 4 C.F.R. § 91.5(c) (1976) reads as follows:

"\* \* \* Generally these criteria will be met by a finding that the erroneous payment of pay or allowances occurred through administrative error and that there is no indication of fraud, misrepresentation, fault or lack of good faith on

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the part of the employee or member or any other person having an interest in obtaining a waiver of the claim \* \* \*."

In the scholarship cases, it seems clear that IRS's failure to maintain the required memorandum accounts for its two scholars was improper and constituted administrative error which caused the overpayments to occur, and we find no indication of fraud, misrepresentation, fault or lack of good faith on the part of the individual students. With regard to the medical examinations mistakenly given at agency expense to certain IRS employees, the District Director has determined that these employees were not at fault for the erroneous payments made on their behalf through administrative error. However, there is a question as to whether scholarship grants or payments for physical examinations are pay or allowances under the waiver statute and regulations.

The authority to waive claims pursuant to 5 U.S.C. § 5584(c) is limited to erroneous payments of "pay" or "allowances." These terms are defined in 4 C.F.R. § 91.2 (1976) as follows:

"(c) 'Pay' as it relates to an employee means salary, wages, pay, compensation, emoluments, and remuneration for services. It includes but is not limited to overtime pay, night, Sunday and irregular and hazardous duty differential; pay for Sunday and holiday work; payment for accumulated and accrued leave; and severance pay \* \* \*. It does not include travel and transportation expenses and allowances and relocation allowances payable under 5 U.S.C. 5724a.

"(d) 'Allowances' as they relate to an employee include but are not limited to payments for quarters, uniform, and overseas cost of living expenses, but exclude travel and transportation allowances, and relocation expense payable under 5 U.S.C. 5724a."

Each of the above definitions lists a number of items that are definitely identified as pay or allowances. Each also states that the respective definition "includes but is not limited to" the specific items listed. The waiver statute is remedial legislation which should be construed broadly, and its legislative history

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indicates an intent to include all allowances, other than travel allowances. Therefore, we believe that any item of pay or allowances may be considered for waiver action, except travel and relocation allowances which are specifically excluded under the statute and regulations.

The items paid under the IRS Scholarship Program were salary, personal benefits, tuition, books and supplies, and travel. Salary is a form of pay. Personal benefits, tuition, and books and supplies are forms of allowances. Travel expenses are specifically excluded from the waiver authority. In view of the above all of the items listed except travel expenses may be considered for waiver action. In this connection we note that while the record shows that the total items paid exceed the limitation, it does not show what items comprise the overpayments. Since the travel expenses paid were relatively small (\$49.60 and \$71.40, respectively), we shall not consider these expenses as constituting any part of the erroneous overpayments.

On the basis of the foregoing the claims against the two students arising out of the overpayments under the Scholarship Program of \$162.22 and \$919.84, respectively, are hereby waived.

Turning to the health examinations, section 4-1a, FPM, chapter 792, subchapter 4 (1969 ed. December 7, 1973), provides as follows:

"a. Federal occupational health programs are designed to promote the health fitness of Federal employees for efficient performance of their assigned work. These programs, therefore, exist to serve management. The considerable benefit for employees is a by-product, but it has been substantial enough to influence unions to become a major force behind establishing occupational health programs in private industry."

In view of the above, it is our opinion that the costs of physical examinations are primarily expenses of management and not employee allowances. Accordingly, the costs of the physical examinations should not be treated as erroneous payments made on behalf of the employees but should be considered improper payments of administrative

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expenses. Therefore, there is no valid indebtedness against the employees and no action to obtain waiver under 5 U.S.C. § 5584 is required.

Paul G. Daxbling

For the Comptroller General  
of the United States